

REMARKS

In order to better define over the art of record, claim 1 has been amended to include the limitations of claim 4, and to recite the seal in the guide for the extension. This feature is described in the specification at page 9, lines 18-20.

Claims 1 and 4-7 stand rejected under §5 U.S.C. §103 as being unpatentable over Kowall U.S. 5,531,498 in view of McConnell U.S. 4,854,541. To the extent that this rejection would be applied against claims as presently amended, such rejection is transversed for the reasons following:

Kowall discloses a conventional piston-cylinder assembly having a piston rod 46 extending from a cylinder 40 to provide a lifting force for a tailgate under the action of pressurized gas. The cylinder 40 is pivoted at a mounting 44 on the body of the vehicle and the piston rod 46 is pivoted to the tailgate. Actuation is provided by an actuation mechanism 42 mounted to the tailgate and driving cables 92, 94 whose ends are anchored to the body next to mountings 44.

Kowall neither discloses nor suggests an extension arranged for axial movement in the cylinder and extending oppositely from the piston rod, wherein the extension is connected to the piston; a force transmitting element attached to the extension; or a guide having a seal in which the extension is centered. Indeed, there does not appear to be any way to modify the piston-cylinder arrangement of Kowall to include such an extension, without completely changing the principle of operation of the invention of Kowall.

McConnell teaches a power line support having an energy absorber with a cylinder in which a piston is movable by a cable against the force of a spring. The cable extends from the cylinder opposite from the end of the cylinder which is pivotably fixed to the pole 20, and carries the power line 18. There is no piston rod projecting axially from the cylinder, and no way to provide such a piston rod without completely changing the principle of operation of the invention of McConnell.

Contrary to the assertion of the examiner, it would not be obvious to attach the force transmitting element of Kowall (cable 92, 94) to the piston of McConnell, because there is no incentive to do so. Indeed, there is no logical way to do this, and the examiner has not suggested how this would be done. McConnell relates exclusively to an energy absorber for a power line, with no need or reason to provide an adjusting device having a force transmitting element connected to the extension in place of the power line, or a piston rod extending oppositely from the extension.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 21 USPQ2d 1941 (Fed. Cir. 1992).

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 123 USPQ 349 (CCPA 1959).

Based on the above cited case law, it is believed that the examiner has failed to establish a *prima facie* case of obviousness based on the disclosures of Kowall and McConnell. Further, none of the references discloses an extension passing through a guide having a seal which seals the working spaces from the atmosphere.

The claims as amended being definite and patentable over the art of record, withdrawal of the rejections and early allowance are solicited. If any objections remain, a call to the undersigned is requested.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

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Dated: June 29, 2004